

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

CONSOLACION BRIONES-MORALES,

Appellant,

v.

WASHINGTON STATE UNIVERSITY,

Respondent.

) Case No. RULE-03-0017

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board GERALD L. MORGAN, Vice Chair. The hearing was held in Conference Room W 230 at the Washington State University Tri-Cities Campus, 2710 University Drive, Richland, Washington, on September 8, 2004. BUSSE NUTLEY, Member, listened to the recorded proceedings, reviewed the file and exhibits and participated in this decision.

1.2 **Appearances.** Appellant Consolacion Briones-Morales appeared *pro se*. Donna J. Stambaugh, Assistant Attorney General, represented Respondent Washington State University.

1.3 **Nature of Appeal.** This is an appeal of an alleged rule violation of WAC 251-19-060 as a result of Appellant's trial service reversion.

II. FINDINGS OF FACT

2.1 Appellant Consolacion Briones-Morales was a Program Support Supervisor I in the GEAR UP Department serving a trial service period for Respondent Washington State University. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC.

2.2 In May 2003 Appellant accepted a position as a Program Support Supervisor I, working as a community outreach specialist, in a new program at WSU entitled GEAR UP. Prior to working at WSU Appellant worked at the Department of Social and Health Services and had approximately 17 years of state service. Appellant was required to complete a six-month trial service period pursuant to WAC 251-19-060.

2.3 Appellant's supervisor, Dr. Yolanda Flores Niemann, Director of Latino Outreach at WSU, initiated the GEAR UP Program. The purpose of GEAR UP is to form partnerships with educators in eligible communities to increase parent involvement and prepare children for higher education. At the time Appellant interviewed and accepted the position, Dr. Flores Niemann advised her GEAR UP was a new program and no specific job duties were outlined for the position. Dr. Flores Niemann further advised Appellant that as a community outreach specialist, she would be involved in developing a manual for the position as the program progressed. As the program developed, Dr. Flores Niemann appointed Genoveva Morales-Ledesma as director of GEAR UP, and Ms. Ledesma reported directly to her. While Ms. Ledesma supervised other community outreach specialists, Dr. Flores Niemann retained supervisory authority over Appellant because Ms. Ledesma was Appellant's sister-in-law. Ms. Ledesma and Appellant, however, interacted daily with regard to Appellant's work issues and Ms. Ledesma provided feedback and guidance.

1 2.4 Ms. Ledesma, as the program director, communicated with Appellant via e-mail when she
2 had questions or concerns about Appellant's performance. As an example, Ms. Ledesma asked
3 Appellant to provide her with copies of her schedule, keep her informed of projects she was
4 working on, and provide her with more details about the projects. Ms. Ledesma also made
5 suggestions to Appellant such as providing plenty of advance notice to potential participants of
6 GEAR UP events. In addition, Ms. Ledesma held regular meetings where Appellant and the other
7 community outreach specialists shared information and ideas about making the program successful.
8 Ms. Ledesma also apprised Dr. Flores Niemann about Appellant's work in progress.

10 2.5 On September 10, 2003, Dr. Flores Niemann and Appellant met. During the meeting
11 Appellant made claims Ms. Ledesma was treating her in a disrespectful manner. Dr. Flores
12 Niemann advised Appellant she could file a grievance with WSU's Human Resource Office. In
13 addition, Dr. Flores Niemann assured Appellant she would be the one conducting her six-month
14 evaluation and informed her the evaluation would be based on discussions with people she was
15 expected to work with. Dr. Flores Niemann also asked Appellant to forward copies of
16 communication involving Ms. Ledesma and other GEAR UP personnel to assist her with the
17 evaluation.

19 2.6 Subsequent to the September 10 meeting, Dr. Flores Niemann reviewed copies of
20 Appellant's communication with others. Dr. Flores Niemann also contacted several people
21 Appellant worked with and received consistent feedback regarding Appellant's unsatisfactory
22 performance.

24 2.7 On September 30, 2003, Dr. Flores Niemann met with Appellant to discuss concerns she
25 had with Appellant's performance. In a memorandum dated October 1, 2003, Dr. Flores Niemann
26 outlined specific expectations and steps Appellant needed to take to improve her performance. Dr.

1 Flores Niemann directed Appellant to report directly to her on all GEAR UP matters and respond to
2 her inquiries as soon as possible. While Dr. Flores Niemann did express an appreciation for
3 Appellant's enthusiasm toward GEAR UP work, she addressed specific deficiencies that required
4 Appellant's immediate attention. Dr. Flores Niemann directed Appellant to work on planning skills
5 and timeliness, and she asked Appellant to provide her with a detailed weekly work plan. Dr.
6 Flores Niemann also expected Appellant to provide copies of all communications related to GEAR
7 UP and emphasized the importance of communicating effectively with personnel and participants so
8 expected goals were understood. In addition, Dr. Flores Niemann encouraged Appellant to improve
9 working relationships, including her attitude and listening skills, and to become more accountable.

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11 2.8 Dr. Flores Niemann advised Appellant she would conduct periodic assessments over the
12 subsequent month and scheduled an October 30 meeting to evaluate Appellant's improvement.
13 Appellant was asked to sign and date the list of work expectations and return it to Dr. Flores
14 Niemann by October 2. Appellant was further advised failure to improve could result in re-
15 evaluation of her trial service appointment.

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17 2.9 On October 1, 2003, Appellant e-mailed Dr. Flores Niemann and informed her she was
18 unable to return the notice of deficiencies. Appellant's e-mail said she wanted an opportunity to
19 review the "accusations" of people interviewed by Dr. Flores Niemann. Appellant also wrote, "I
20 will not sign a document without reading it or agree to it. You know you are totally out of line with
21 all this." Appellant also claimed the notice of deficiencies was retaliatory because of her claims
22 against Ms. Ledesma.

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24 2.10 Appellant did not pursue any grievance against Ms. Ledesma.
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1 2.11 After receiving Dr. Flores Niemann's October 1 memorandum giving notice of her
2 deficiencies, Appellant requested medical leave and did not return to work.

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4 2.12 By letter dated October 27, 2003, Larry James, Chancellor, informed Appellant she was
5 being reverted from her trial service period as a Support Supervisor I, because of her inability to
6 meet an acceptable standard of performance. Mr. James informed Appellant her last working day
7 was October 30, 2003. Mr. James also advised Appellant she could request to have her name
8 placed on the dual-agency reversion register and service-wide reversion register for her former
9 classification.

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11 2.13 On December 1, 2003, Appellant appealed her trial service reversion and filed a timely
12 appeal with the Personnel Appeals Board.

13 14 **III. ARGUMENTS OF THE PARTIES**

15 3.1 Appellant argues Respondent's trial service reversion from her Support Supervisor I
16 position was not for performance deficiencies but rather for retaliatory purposes because she alleged
17 harassment against Ms. Ledesma. Appellant argues she was an efficient worker who left the
18 security of a long term position to work as a community outreach person because of her strong
19 belief in the goals of the GEAR UP Program. Appellant contends she provided the best possible
20 service to recipients of the GEAR UP Program. Appellant asserts she was unaware of problems
21 with her work performance until 30 days prior to her termination. Appellant contends her working
22 relationship with Ms. Ledesma made it very difficult for her to perform her duties, but in spite of
23 the difficulties, Appellant asserts her GEAR UP events were successful. Appellant argues she did
24 not receive the proper guidance or training and argues she should be reinstated and offered the
25 correct training to successfully complete her trial service period.

1 3.2 Respondent argues Appellant was given adequate written notice of deficiencies, was
2 provided with an outline of the required changes, and was given an opportunity to improve her
3 performance. Respondent contends Appellant did not take advantage of the opportunity for
4 improvement. Respondent asserts Appellant's compassion for GEAR UP recipients and her
5 dedication to program goals were appreciated and made the decision to terminate her trial service
6 position difficult. However, Respondent argues Appellant could not perform the functions of her
7 job. Respondent argues Appellant was reverted from her trial service based on her failure to
8 improve her work performance. Respondent contends that the requirements of WAC 251-19-060
9 were met and asks that the appeal be denied.

10 11 **IV. CONCLUSIONS OF LAW**

12 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
13 herein.

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15 4.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-
16 170).

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18 4.3 The issue presented here is whether Respondent violated the conditions of WAC 251-19-
19 060(6)(a) by failing to provide Appellant with notice of detailed work deficiencies and notice of
20 specific changes required, and WAC 251-19-060(6)(b) by failing to provide a reasonable
21 opportunity to overcome identified deficiencies.

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23 4.4 WAC 251-19-060 provides that "a trial service period of six months shall be required upon
24 appointment of a permanent employee to a new class at the institution . . ." Subsection (5) indicates
25 the trial service period is to provide the employer with an opportunity to observe and evaluate the
26 new employee's work and, if the employee does not perform satisfactorily during the trial service

1 period, he/she may be reverted. WAC 251-19-060(6)(a) requires that reversion be preceded by
2 written notice detailing deficiencies in performance, which shall include the specific changes
3 required, and (b) a reasonable opportunity to overcome identified deficiencies. WAC 251-19-
4 060(7) indicates that an employee who is reverted may appeal to the Personnel Appeals Board
5 regarding:

6 (a) Whether the employer complied with the requirements of subsection (6) of
7 this section; and

8 (b) Whether the claimed deficiencies existed at the time of reversion.

9 4.5 WAC 356-30-320 (6) states,

10 Former permanent employees who have promoted, demoted, or transferred to a
11 position at a higher education institution in accordance with provisions of Title
12 251 WAC and fail to complete the trial service period may request their names be
13 placed on the dual-agency reversion register and service-wide reversion register
14 for the former class.

15 4.6 We recognize Appellant's situation was unique due to the newness of the GEAR UP
16 Program and her working relationship with Ms. Ledesma, who was also her sister-in-law. We also
17 recognize WSU did not provide Appellant with specific expectations until she met with Dr. Flores
18 Niemann on September 30. However, Appellant never acknowledged her notice of deficiencies nor
19 did she make any efforts to improve. Even when viewing all the facts in the light most favorable to
20 Appellant, we conclude the appointing authority correctly determined Appellant was not able to
21 meet an acceptable standard of performance.

22 4.7 Therefore, we conclude that Respondent complied with the provisions of WAC 251-19-
23 060(6) by providing Appellant with written notice detailing deficiencies in her performance,
24 outlining the specific changes required, and providing her with a reasonable opportunity to
25 overcome the identified deficiencies. Appellant has failed to meet her burden of proving that
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1 Respondent failed to comply with WAC 251-19-060 by reverting her during her trial service period,
2 and the appeal should be denied.

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V. ORDER

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NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Consolacion Briones-Morales
is denied.

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DATED this _____ day of _____, 2004.

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WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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Busse Nutley, Member

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